



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

AUG 25 2009

Colonel Robert D. Peterson
District Engineer
U.S. Army Corps of Engineers, Huntington District
502 Eighth Street
Huntington, West Virginia 25701-2070

Re: PN 2008-000370; Horizon Resources, LLC;
Synergy Surface Mine No. 2

Dear Colonel Peterson:

The U.S. Environmental Protection Agency (EPA) provided comments on July 31, 2009 in response to the Public Notice issued for Horizon Resources, LLC's proposed Synergy Surface Mine No. 2. The proposed project involves the construction of four permanent valley fills and two temporary in-stream drainage ponds and two access road crossings, impacting approximately 7,140 linear feet of streams. In our July 31, 2009 letter, EPA stated that we believe the project as proposed may not comply with the Section 404(b)(1) Guidelines, may adversely affect water quality, resulting in an impairment of the local and downstream aquatic life use, and the project's direct and cumulative impacts may be persistent, permanent and cause or contribute to significant degradation of the aquatic ecosystem. These comments are incorporated herein by reference.

EPA continues to be concerned the project may not satisfy the Clean Water Act Section 404(b)(1) Guidelines, 40 C.F.R. Part 230, that form the substantive environmental criteria upon which permit decisions are based. EPA believes the project, as proposed, will result in substantial and unacceptable impacts to aquatic resources, as covered in Part IV.3.b of the 1992 Clean Water Act Section 404(q) Memorandum of Agreement between the Environmental Protection Agency and the Department of the Army. In addition, given our concerns regarding the effectiveness of the proposed mitigation, EPA believes it may be difficult to support a finding of no significant impact and it may therefore be appropriate for you to prepare an Environmental Impact Statement (EIS) concerning this proposed project.

To address our concerns EPA offers the following recommendations on the proposed project.

- A thorough alternatives analysis should be prepared which evaluates not only geographic alternatives, but design and technology alternatives which avoid impacts to aquatic resources to the maximum extent practicable and clearly demonstrates why less damaging alternatives are not practicable.
- Monitoring conditions should be incorporated into the permit which require the applicant to conduct appropriate in stream and effluent monitoring. Should the



monitoring show an excursion from the narrative water quality standards at points downstream from the valley fills, any further discharges into waters of the United States must stop until the excursions can be remediated. This is to ensure that discharges associated with the project do not cause or contribute to excursions from applicable water quality standards, and thus, are not inconsistent with the requirements in the Section 404(b)(1) Guidelines.

- A “reasonable potential” analysis under the National Pollutant Discharge Elimination System (NPDES) regulations should be conducted and all biological and chemical data collected at the project site and adjacent to the mine site should be submitted to the Corps and EPA for review.
- A thorough cumulative effects analysis of mining impacts within the sub-basin should be prepared as part of the decision-making process for this permit application. This analysis should include a detailed presentation of past, present and reasonably foreseeable activities including the other eleven identified mines in the sub-basin and any other adjacent mines for which the Corps has received a application; fully analyze the current state of the aquatic ecosystem; consideration of the affects on the human environment including private drinking wells and other drinking water supplies. This analysis should include at a minimum the cumulative effects of all reasonably foreseeable activities on water quality, loss of stream function and habitat and the effects of the hydrologic modifications to the watershed. It should also address the impact of deforestation on water quality, water quantity, and overall ecological conditions within the watershed.
- EPA questions the use of the West Virginia In-Lieu Fee program as mitigation for this proposed project. In light of the significant past, present and future mining activities within the Coal River Sub-basin, EPA believes that there may be opportunities to explore watershed mitigation projects that would better address the impacts of mining activities within the sub-basin. The mitigation should be in place prior to the discharge of fill material. Approved mitigation projects should not utilize sediment ditches or groin ditches as compensation. Any approved mitigation success criteria must represent performance standards which include observable or measureable physical (including hydrological), chemical, and biological measures to determine if the compensatory mitigation project meets its objectives. The plan should outline a monitoring commitment to determine if success is being achieved. It is important that the applicant identify a reasonable timeframe in which the functional replacement is expected to occur including the biological functions.
- In making the determination under NEPA whether or not the proposed impacts to waters of the United States significantly affect the quality of the human environment, the Corps should consider the aforementioned recommendations on mitigation. Mitigation projects proposed through the in-lieu fee program may involve additional temporal losses and projects completed out of the Coal River sub-basin may not fully mitigate the direct, indirect, and cumulative impacts within that watershed, to the point that a “finding of no significant impact” may not be supportable.

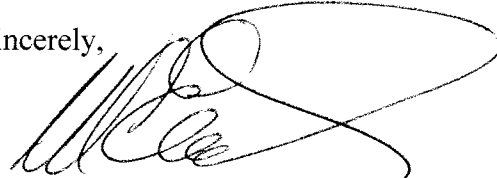
EPA believes there are opportunities to address the concerns EPA has raised and looks



forward to working with the Corps and the applicant to explore the recommendations provided by EPA and any other opportunities the Corps and applicant wish to introduce and discuss including the need to prepare an EIS.

If you have any questions or concerns, please do not hesitate to contact me or have your staff contact Mr. Jeffrey Lapp of my staff at 215-814-2717.

Sincerely,

A handwritten signature in black ink, appearing to read 'W. C. Early', with a large, sweeping loop at the end.

William C. Early
Acting Regional Administrator

